IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC.CIVIL APPLICATION NO.5 OF 2005

Smt.Akshata A.Mahalaxmikar ...Applicant
vs.
State of Maharashtra & Anr. ...Respondents

MISC.CIVIL APPLICATION NO.23 OF 2005

Ashok Sitaram Mahalaxmikar ...Petitioner
vs.
Smt.Akshata A. Mahalaxmikar ...Respondent

Mr.J.S.Kini for the Applicant in M.C.A.NO.5/2005
Mr.George M. Thomas for the Applicant in M.C.A.No.23/2005
and for Respondent No.2 in M.C.A.No.5/2005.

CORAM: A.S.OKA,J.
DATE : APRIL 26,2005.

P.C.:

1. For the sake of convenience parties are referred to with reference to their status in M.C.A.No.5 of 2005. The Applicant is the wife and the Respondent No.2 is the husband. The Respondent No.2-husband filed a Petition for divorce in the Court at Civil Judge Senior Division, Kalyan. Thereafter, the wife filed a Petition for maintenance under Section 125 of Cr.P.C., 1973 which is pending in the Family Court at Mumbai. A prayer in this Application by the Applicant-wife is for transfer of Petition for divorce filed by the Respondent No.2-husband from the Court at Kalyan to the Family Court at Mumbai. One of the various grounds for transfer of the Petition which are set out in the Application is that there is apprehension in the mind of the Applicant of danger to her life if she attends the Court at Kalyan. The other ground is that the Applicant is the housewife staying at Mumbai and therefore it is difficult for her to attend the Court at

Kalyan as she is depending on her brother. Another ground is that the Family Court at Mumbai more conducive and better equipped do deal with the matters concerning marriage. This application is opposed by the learned Counsel for the Respondents. The contention of the Respondents is that the Application for maintenance is filed deliberately in the Family Court at Mumbai long after the Petition was filed by the Respondent No.2 in Kalyan Court. It is submitted that the apprehension of the Applicant regarding danger to her life if she comes to Kalyan is purely imaginary. The Respondent has filed a Petition being Misc.Civil Application No.23 of 2005 praying for transfer of the Petition under Section 125 of Cr.P.C.,1973 from the Family Court, Mumbai to the Court at Kalyan.

2. I have considered the rival submissions. There cannot be any dispute that for the convenience of both the parties, proceedings pending in two different court will have to be heard by one and the same Court. The Applicant is housewife and is staying at Grant Road, Mumbai. The Respondent No.2 is a resident of Domibivali in Thane District. The Apex Court has held that in such matters convenience of wife is to be seen. Therefore, a case is made out for transfer of the Petition filed by the Respondent No.2 in the Court at Kalyan to the Family Court, Mumbai.

3. It must be noted that so far as ground (a) of the

Application regarding apprehension regarding danger to the life of the Applicant at Kalyan is concerned, the said ground is not at all substantiated by the Applicant. The Applicant is trying to contend that the Family Court is more equipped to deal with the matrimonial matters. Under the law of land wherever the Family Courts are not established, the Courts of Civil Judge Senior Division are conferred the jurisdiction to hear and decide the matrimonial matters under Hindu Marriage Act. The Courts of Civil Judge Senior Division are competent in all respects and by no stretch of imagination it can be said that the Family Courts are superior to the Courts of Civil Judge Senior Division. As any other Court is bound to do, the Courts of Civil Judge Senior Division are bound to make efforts for amicable settlement between the parties. It cannot be said that the Family courts are more equipped than the Court of Civil Judge (Senior Division).

4. Hence I pass the following order :

i) M.C.A.No.5 of 2005 is allowed. Marriage Petition No.305 of 2005 pending on the file of Civil Judge Senior Division is transferred to the Family Court at Mumbai and the same is directed to be heard along with M.J.Petition (Lodging) No.655 of 2005.

ii) M.C.A.no.23 of 2005 does not survive and the same is rejected.

iii) Concerned Court and the parties to act upon an authenticated copy of this order.

JUDGE.